

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JOHN W. WALKO,

Plaintiff,

v.

MASSACHUSETTS STATE POLICE,

Defendant.

C.A. No. 1:21-cv-10839-RGS

**DEFENDANTS MASSACHUSETTS STATE POLICE'S
MOTION TO DISMISS THE COMPLAINT**

Defendant Massachusetts State Police moves to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(1). This action arises from interactions between pro se plaintiff John Walko and officers of the Massachusetts State Police at a rest stop on I-91 in May 2018. Plaintiff, without naming the officers involved, alleges that Massachusetts State Police claimed to have mental health concerns about Plaintiff, threatened to have him psychiatrically evaluated unless he cooperated with a search of his property, and then proceeded to search his vehicle and bags without a warrant. Plaintiff brings his claims against MSP pursuant to 42 U.S.C. § 1983 and the Massachusetts Civil Rights Act, M.G.L. c. 12, §§ 11H, 11I, claiming that MSP's alleged search of Plaintiff and his property violated his constitutional rights and were intentional torts.

MSP moves to dismiss the complaint for lack of jurisdiction because Plaintiff's claim is barred by the Eleventh Amendment. The Commonwealth has not waived sovereign immunity against claims brought pursuant to 42 U.S.C. § 1983 or the Massachusetts Civil Rights Act ("MCRA"), or for intentional tort claims. MSP, as a branch of the Commonwealth, is therefore immune from suit.

WHEREFORE, for the reasons stated herein and in the accompanying memorandum of law, Massachusetts State Police respectfully requests that this Court grant its motion and dismiss Plaintiff's complaint in its entirety.

Respectfully submitted,

Defendant MASSACHUSETTS STATE POLICE,

By its attorneys,

MAURA HEALEY
ATTORNEY GENERAL

/s/ Katherine B. Dirks
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Date: September 27, 2021

CERTIFICATE OF SERVICE

I, Katherine B. Dirks, Assistant Attorney General, hereby certify that I have this day, September 27, 2021, served the foregoing document upon all parties by electronically filing to all ECF registered parties and by sending a postage prepaid copy to all unregistered parties.

/s/ Katherine B. Dirks
Katherine B. Dirks, BBO# 673674